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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 20, 2014

10:06 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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2 (CC: Doc. no. 7643) Motion for Objection to Claim(s) Number:

3 5800.

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A P P E A R A N C E S :

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BY: ALEXANDRIA J. REYES, ESQ. (TELEPHONICALLY)

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ALSO PRESENT:

KATHY PRIORE, ESQ., Associate Counsel, GMAC ResCap

(TELEPHONICALLY)

WEKESA MADZIMOYO, Claimant/Creditor, Pro Se

AFIYA MADZIMOYO, Claimant/Creditor, Pro Se

1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020. This is the objection to
4 the Madzimoyo claim 5800.

5 Mr. Wishnew? Why don't we get --

6 MR. WISHNEW: Good --

7 THE COURT: -- all of the appearances. Okay.

8 MR. WISHNEW: Absolutely, Your Honor. Good morning,
9 Your Honor. Jordan Wishnew. With me is my colleague, Jessica
10 Arett, from Morrison & Foerster, counsel for the ResCap
11 Borrower Claims Trust.

12 The only matter, as you noted this morning, going
13 forward on today's agenda is under Roman numeral II on page 5
14 of today's agenda: item 1, the ResCap Borrower Claims Trust
15 objection to Claim 5800 filed by Wekesa Madzimoyo.
16 Mr. Madzimoyo is in court, so I'll let him make his appearance.

17 THE COURT: Okay. Mr. Madzimoyo, if you'd make your
18 appearance.

19 MR. MADZIMOYO: Good morning, Your Honor. My name is
20 Wekesa Madzimoyo. I'm here in support of our Claim 5800.

21 THE COURT: Okay. We'll let Mr. Wishnew argue first;
22 then I'll give you a chance to argue.

23 MR. MADZIMOYO: That's fine.

24 THE COURT: Okay? Thank you very much.

25 All right, go ahead, Mr. Wishnew.

1 MR. WISHNEW: Thank you, Your Honor. Your Honor,
2 we're addressing the Borrower Trust's objection to Claim 5800
3 filed by Mr. Madzimoyo at docket number 7643. Mr. Madzimoyo
4 filed a response to the objection, on November 16th, filed at
5 docket number 7731. The Borrower Trust filed its reply on
6 November 17th at docket number 7763.

7 Your Honor, through this objection the Borrower Trust
8 seeks to expunge the proof of claim filed by Mr. Madzimoyo.
9 The Borrower Trust asserts that the allegations in the proof of
10 claim are without merit, as the claim has failed to allege how
11 the debtors' pre-petition actions give rise to liability for
12 the stated causes of action. Accordingly, the Borrower Trust
13 believes this claim does not represent a valid pre-petition
14 claim against the debtors' estates.

15 In support of the objection, the Borrower Trust
16 submitted declarations by Kathy Priore, associate counsel of
17 the ResCap Liquidating Trust, attached as Exhibit 2 to the
18 objection, and another declaration by Alexandria Reyes,
19 co-counsel to the ResCap Liquidating Trust, attached as Exhibit
20 3 to the objection. Ms. Priore also submitted a supplemental
21 declaration in support of the objection, which is attached as
22 Exhibit 1 to the Borrower Trust reply. Ms. Priore and
23 Ms. Reyes are appearing telephonically today and are available
24 to answer any questions the Court might have.

25 Mr. Madzimoyo filed a general unsecured claim,

1 designated as Claim 5880, on November 8th, 2012 in the amount
2 of 2,275,000 dollars against Debtor GMAC Mortgage. The
3 asserted basis for liability of the claim is "wrongful
4 foreclosure, bad faith, fraud, Civil Action file
5 09-CV-9136-10". The claim represents Mr. Madzimoyo's attempt
6 to further litigate the pre-petition state-court action that's
7 currently on appeal in Georgia. The claimant's complaint was
8 brought in 2009 to obtain a temporary restraining order to halt
9 a foreclosure sale. In that regards, Mr. Madzimoyo has been
10 successful in that he presently remains in his property even
11 though he's not made a mortgage payment in over five years.

12 Notwithstanding Mr. Madzimoyo's ability to stave off a
13 foreclosure sale, his claims against GMAC Mortgage are entirely
14 without merit and devoid of supporting evidence. More
15 specifically, the claimant failed to substantiate his claims
16 for fraud with any evidence that the debtors made a false
17 representation. Contrary to his assertions, and as shown in
18 the objection, Bank of New York had proper title to the loan by
19 assignment of a security deed from EquiBank and, therefore, the
20 right to enforce the loan through its servicer, GMAC Mortgage.

21 The claimant fails to allege -- I'm sorry. The
22 claimant also fails to allege a cause of action for wrongful
23 foreclosure, because no foreclosure has occurred to date and
24 the claimant remains in the possession of his home. The
25 claimant fails to allege a cause of action for wrongful attempt

1 at foreclosure, because he's not shown that the foreclosure
2 notice contained any untrue statement when it was published.
3 Finally, the claimant fails to allege a cause of action for
4 quiet title, because once he executed the security deed to the
5 underlying real property, he conveyed title to the property to
6 the lender.

7 In addition, similar to other claimants, Mr. Madzimoyo
8 objects to the submission of Ms. Priore's declaration as
9 hearsay, but the claimant does not identify any of the
10 statements in the Priore declaration as being factually
11 inaccurate, nor does he identify a legitimate basis for calling
12 into question the trustworthiness of Ms. Priore's written
13 testimony. All the statements made by Ms. Priore are based on
14 information maintained in Debtors' books and records, which are
15 records kept in the ordinary course of the debtors' business.
16 As a result and as set forth in greater detail in the Borrower
17 Trust pleadings, these statements qualify as a permissible
18 exception to the rule against hearsay, under Federal Rule of
19 Evidence 803(6)(B).

20 Therefore, Your Honor, for the reasons discussed in
21 the objection, the Priore and Reyes declarations, as well as in
22 the reply, the relief sought in the objection should be granted
23 and the claim should be disallowed, stricken from the debtors'
24 claims register.

25 THE COURT: Let me ask you some questions about

1 Mr. Madzimoyo's state-court action, which -- a judgment in
2 favor of all defendants, dismissing the complaint with
3 prejudice, was filed on June 5th, 2014. And I know
4 Mr. Madzimoyo appealed that ruling on July 2nd, 2014. What is
5 the status of the appeal?

6 MR. WISHNEW: I believe Your Honor has been --
7 briefing on the matter. I think -- and Ms. Reyes, who's on the
8 phone, might be able to correct me -- that --

9 MS. REYES: Sure. I'm happy to jump in and help with
10 that as well. We actually --

11 THE COURT: Could you -- Ms. --

12 MS. REYES: Our appellee -- this is Alex Reyes and I'm
13 dialed in from Atlanta, Your Honor.

14 But the matter has been appealed and Mr. Madzimoyo has
15 filed his appellants' brief, and then the appellee's brief is
16 actually due today in the court of appeals. So the briefing is
17 still ongoing.

18 THE COURT: All right, thank you.

19 So, Mr. Wishnew, did the debtors join in the motion to
20 dismiss? I mean, because of the supplemental servicing
21 order --

22 MR. WISHNEW: Um-hum.

23 THE COURT: -- the state-court action was able to go
24 forward to the extent -- against the debtors, to the extent
25 that it sought equitable relief, but not with respect to

1 damages.

2 MR. WISHNEW: Um-hum.

3 THE COURT: What was -- did GMAC participate -- and if
4 so, how -- in the motion to dismiss in Georgia?

5 MR. WISHNEW: With regards to the motion to dismiss, I
6 don't know whether GMAC affirmatively put in a pleading in
7 support of the motion to dismiss, as much as the -- they were
8 certainly on board with reopening the case. And --

9 THE COURT: But whether you were on board or not is
10 not the issue.

11 MR. WISHNEW: Right.

12 THE COURT: Did GMACM participate in the proceedings
13 once the case was reopened?

14 MR. WISHNEW: If I could defer in that regards to
15 Ms. Reyes and see if she can assist me.

16 MS. REYES: Your Honor, I'm confirming that right now.
17 But my understanding is that the motion to dismiss was actually
18 filed by the investor; I believe it was Bank of New York Mellon
19 Trust. And GMAC -- it was noted in the motion -- it was -- I
20 believe it was noted in a footnote. But I am -- and in fact,
21 I'm taking a look at this right now. I believe that it was
22 just notated in the motion that GMAC was in bankruptcy and was
23 not actually a moving party on the motion to dismiss. But I
24 can confirm that with you momentarily.

25 THE COURT: What was the relief sought in the state-

1 court action --

2 MR. WISHNEW: The relief --

3 THE COURT: -- against GMACM? What was the relief
4 sought? Was there -- and was it seeking an injunction against
5 foreclosure? Was it --

6 MS. REYES: It was, Your Honor. It was to halt the
7 foreclosure sale. And it was based on the allegation that the
8 tenants did not produce the original note prior to initiating
9 and scheduling foreclosure proceedings, even though production
10 of the original note is not required under Georgia law.

11 MR. WISHNEW: Your Honor, there were also damages
12 sought on account of wrongful foreclosure.

13 THE COURT: Well, I understand there were damages
14 sought --

15 MR. WISHNEW: Right.

16 THE COURT: -- but the --

17 MR. WISHNEW: But --

18 THE COURT: -- the case could not proceed against
19 GMACM to the extent that it sought damages, but under the
20 supplemental servicing order it could proceed --

21 MR. WISHNEW: Correct, Your Honor.

22 THE COURT: -- with respect to the request for
23 equitable relief.

24 MR. WISHNEW: Correct.

25 THE COURT: What I'm trying to ascertain is whether --

1 because the court -- GMACM was the defendant, correct?

2 MR. WISHNEW: Yes, Your Honor.

3 THE COURT: And the state court dismissed the
4 complaint against all defendants, with prejudice?

5 MR. WISHNEW: Correct, Your Honor.

6 THE COURT: Okay.

7 MS. REYES: Your Honor, if I may. I just confirmed.
8 Yeah, there's a note. We filed a motion for judgment on the
9 pleadings, in the state court, on behalf of Defendants Bank of
10 New York Mellon Trust, JPMorgan Chase, and then GMAC Mortgage,
11 with a footnote as to GMAC Mortgage; we said that GMAC is
12 participating only to the extent that the plaintiff is seeking
13 nonmonetary relief against GMAC, as set forth in the amended
14 notice of bankruptcy and effective automatic stay; all claims
15 for monetary relief against GMAC are stayed as a result of the
16 bankruptcy.

17 THE COURT: Okay. And what is the Georgia rule with
18 respect to res judicata? I understand that the appeal is still
19 pending.

20 MR. WISHNEW: There is no res judicata effect if there
21 is a pending appeal.

22 THE COURT: Okay. All right. All right, is there
23 anything you wish to add to your argument?

24 MR. WISHNEW: Nothing at this time, Your Honor.

25 THE COURT: So I gather you acknowledge that in the --

1 just bear with me a second.

2 You acknowledged in the reply that the corrective
3 assignment that was filed still had an error by listing the
4 trust name as "RAMP 2006-RP2" instead of "RAAC Series
5 2006-RP2".

6 MR. WISHNEW: That's correct, Your Honor. The RAMP
7 was the issuer, and RAAC was the depositor. There was
8 certainly a discrepancy in the assignments of deed of trust,
9 but it's our position that that discrepancy is really
10 immaterial and, frankly, not even actionable against GMAC
11 Mortgage.

12 THE COURT: It's not actionable because, your position
13 is, the borrower doesn't have standing to object with respect
14 to the assignments between the trusts?

15 MR. WISHNEW: That's correct, Your Honor. In
16 addition, the fact is, the notice is, frankly -- the notice of
17 foreclosure is simply a prerequisite to pursuing a sale, and a
18 sale has never occurred here. So Mr. Madzimoyo has never been
19 damaged in any way by these assignments.

20 THE COURT: Okay, let me hear from Mr. Madzimoyo,
21 okay? Thank you.

22 MR. WISHNEW: Thank you, Your Honor.

23 THE COURT: Good morning, Mr. Madzimoyo.

24 MR. MADZIMOYO: Good morning. How are you doing, Your
25 Honor?

1 Let me start with -- we have been damaged severely by
2 this action. And Georgia -- as I have responded, Georgia does
3 allow for a -- I'll find -- in Hoff (ph.) v. Home Equity
4 Servicing, that publishing untrue information that the
5 homeowner is in default. Okay.

6 THE COURT: Well, let me ask you this.

7 MR. MADZIMOYO: Sure.

8 THE COURT: Do you dispute that you were in default?
9 You hadn't paid your mortgage.

10 MR. MADZIMOYO: Yes, I do, Your Honor.

11 THE COURT: Well, let me ask you --

12 MR. MADZIMOYO: Yeah.

13 THE COURT: Let's be clear.

14 MR. MADZIMOYO: Okay.

15 THE COURT: Had you stopped paying your mortgage?

16 MR. MADZIMOYO: To these people, yes, I have.

17 THE COURT: Yes. Okay. So --

18 MR. MADZIMOYO: Okay --

19 THE COURT: -- you haven't paid your mortgage for how
20 many years?

21 MR. MADZIMOYO: It's been six years.

22 THE COURT: Okay.

23 MR. MADZIMOYO: Okay.

24 THE COURT: So why don't you believe you were in
25 default if you stopped paying your mortgage?

1 MR. MADZIMOYO: Well, because -- I mean, Your Honor,
2 only the party that I owe can tell me that I'm in default,
3 okay? And every time the defendants -- or the debtor has been
4 called to prove that they have standing to call me in default
5 or access to the power-of-sales clause, they have contradicted
6 themselves, all right, based on what they have filed in the
7 record; and I can show that.

8 In addition to that, on two occasions when they
9 presented that so that they can move forward with foreclosure,
10 those inconsistencies have called two judges to stop them from
11 going forward. Okay? That's Judge Hancock (ph.) and initially
12 Judge Barrie. So whenever -- I can owe you money, but somebody
13 else cannot claim that I'm in default; only you -- you, who I
14 have a contract with, only you can. And they have not
15 established from the very beginning.

16 And part of our issue here with -- is that we have --
17 our indebtedness has been doubled because we have been --
18 attempted -- the foreclosure has commenced. And there is a
19 ruling in Georgia that you can file for wrongful foreclosure
20 when a foreclosure has commenced, not necessarily when the sale
21 is completed. And that's documented there.

22 But this foreclosure -- there were two different
23 foreclosures -- actually, three. At one time, New York Bank of
24 Mellon Trust was foreclosing for the company, and I'm saying
25 that and I know it's a pool, but it's also a company called

1 RAMP 2006-RP2. And another time they sought to foreclose in
2 the name of RAAC 2006-RP2. Both of those companies exist,
3 okay, and both have made claims of our indebtedness. And the
4 defend -- and the debtor has tried to collect.

5 Now, they try to use You v. Chase, which says it
6 doesn't matter who holds the note. In Georgia, if they are the
7 holder of the security deed, then they can move forward. What
8 that doesn't do is it doesn't clear (sic) that we have been --
9 our indebtedness has been claimed. And get it; I'm not talking
10 about a note that's sold to one and then to the other. We aver
11 that our note, our indebtedness, has been sold to both RAAM
12 2006-RP2 and RAAC at the same time. If that is the case, as
13 upon information and belief we believe, then either when they
14 sold it the second time concurrently -- not in sequence -- they
15 either extinguished our debt and then collected payments from
16 us all those years illegally, or they enriched themselves at
17 our expense and without our consent.

18 What we have been denied --

19 THE COURT: If you haven't paid your mortgage --

20 MR. MADZIMOYO: -- from the very beginning is
21 discovery.

22 THE COURT: If you haven't paid your mortgage in five
23 years, how has anybody been enriched?

24 MR. MADZIMOYO: Well, what -- here is -- they have
25 collected payments from us for over ten years. Okay. That's

1 how they've been enriched. Okay? And we understand where the
2 standoff is, but it's a standoff because they -- Your Honor,
3 when we asked them -- the reason that Judge Tangela Barrie at
4 the very beginning, upon looking at fifty pages of exchanged
5 documents between us and them, when we first started saying,
6 hello, work with us here, clear this stuff up for us -- this
7 was not a court situation -- they refused to provide the
8 documentation. When she looked at it, there was no assignment
9 at all. I don't mean late filing. I mean not even executed.
10 And it wasn't until seven months after we filed our action and
11 they filed action to foreclose on us, that an assignment was
12 executed.

13 Now, they say it was executed out of abundance of
14 caution. Here's what the record shows: it is only after we --

15 THE COURT: Well, their argument is that, as a matter
16 of law --

17 MR. MADZIMOYO: Yes?

18 THE COURT: -- where --

19 MR. MADZIMOYO: Yes, where there's --

20 THE COURT: -- through merger --

21 MR. MADZIMOYO: Yes.

22 THE COURT: -- that it's unnecessary to do an
23 assignment.

24 MR. MADZIMOYO: I understand that.

25 THE COURT: You have any cases that support your

1 position that it was necessary?

2 MR. MADZIMOYO: No, what we suggest is that because of
3 the inconsistency, all right, then we need -- we haven't had
4 proper discovery to determine it. Just because they claim it
5 has been -- we've been -- attempted -- two companies claim that
6 we are indebted to them. And to say, well, we're going to make
7 a second corrective assignment, and it really -- real
8 assignment ought to have gone to RAAP (sic), it doesn't protect
9 us from either of those companies coming back. Because they
10 have the same trustee, that doesn't mean that trustee cannot
11 come after us, saying that we also owe RAMP or we also owe
12 RAAC.

13 And what we have said is, we have standing to
14 interplead. Since those two companies, in the name of one
15 trustee, have attempted to foreclose and to claim our
16 indebtedness, then we have a right, under Georgia law, to
17 interplead to have them settle that. And it can't be settled,
18 in our opinion. And I'm sorry I'm a little -- I'm excited.
19 I'm --

20 THE COURT: No, that's okay.

21 MR. MADZIMOYO: -- a little scared.

22 THE COURT: Go ahead. I'm --

23 MR. MADZIMOYO: It can't be settled by a corrective
24 assignment that changes who owns the property, without some
25 either declarative judgment or some other --

1 THE COURT: Why is that?

2 MR. MADZIMOYO: -- affirmation of that.

3 THE COURT: Why is that?

4 MR. MADZIMOYO: Well, it has to be at least
5 acknowledged, traditionally, by the other party. If it
6 belonged to RAMP for years and they said, oops, it really
7 belongs to RAAC -- it's a different company -- then typically
8 RAMP would at least sign off on that. Okay? You can't just
9 make the corrective assignment historically. And I do -- I
10 mean, I have a reference that says you are changing ownership.
11 This is not a scrivener's error; now, they want to claim that
12 it is, okay, but these are different companies.

13 And the declaration by Priore that indicates that RAMP
14 was merely a depositor, first of all, we object to it based on
15 hearsay; secondly -- and that's documented; I won't say it
16 again, unless you ask me. But secondly, the -- it -- well,
17 just a minute; I lost my thought on that.

18 THE COURT: That's okay. Take your time.

19 MR. MADZIMOYO: Just let me find it here.

20 No, okay, we got -- it's hearsay. Oh. She indicates
21 that RAAC -- RAMP was a depositor. Of course that's
22 contradicted by the Juan Aguirre affidavit that they filed in
23 federal court, who also said he had prior knowledge and he was
24 the one who keeps the books. And he, and upon his
25 investigation, said RAMP was. She comes back and says, oh, but

1 RAMP was not -- RAMP was a depositor. Notice she does not say
2 that RAMP 2006-RP2 was a depositor. And this is important
3 because in this whole world of securitization and changing
4 hats, RAMP and RAMP 2006-RP2, we don't believe, and they've not
5 provided any evidence, is the same company. Okay?

6 So RAMP may have been, but that doesn't mean that RAMP
7 2006-RP2 does not own our mortgage as they have claimed -- or
8 our indebtedness, as they have claimed, to the point that they
9 want to say that we owe them. So they doubled our
10 indebtedness. And they have an obligation. All we have tried
11 to get is clear discovery so that they would stand in
12 everything they've submitted. Everything, each time, has been
13 contradicted by their own filings.

14 THE COURT: What is it that you want discovery of?

15 MR. MADZIMOYO: What we want right now is we want RAMP
16 and RAAC interpled so that we get clear, okay. And that has to
17 meet the Rules of Evidence, not hearsay, not just saying --

18 THE COURT: What I'm dealing with --

19 MR. MADZIMOYO: Okay, go ahead. Yeah.

20 THE COURT: -- is a claim that you filed --

21 MR. MADZIMOYO: That's right.

22 THE COURT: -- against GMACM.

23 MR. MADZIMOYO: Yes.

24 THE COURT: There's no interpleaders, there's nothing.
25 You have a claim --

1 MR. MADZIMOYO: Yes. Okay --

2 THE COURT: You have filed a claim against GMACM.

3 MR. MADZIMOYO: Okay. All right.

4 THE COURT: You and it --

5 MR. MADZIMOYO: Right.

6 THE COURT: -- are the only --

7 MR. MADZIMOYO: Okay.

8 THE COURT: -- relevant parties --

9 MR. MADZIMOYO: Okay.

10 THE COURT: -- to what's before me.

11 MR. MADZIMOYO: To what's on today. All right.

12 Right.

13 THE COURT: Okay?

14 MR. MADZIMOYO: All right.

15 THE COURT: So let me come back to it: what is it
16 that you want discovery of?

17 MR. MADZIMOYO: All right. GMAC, through ResCap, we
18 claim in our second amended complaint, has doubled our
19 indebtedness by selling concurrently this -- our note, to two
20 different parties. Okay? And we want proof that that is not
21 the case or it is the case. That's what we want discovery on,
22 okay? All we have is a corrected assignment as their feeble
23 attempt to discredit that, and Ms. Priore's disputed
24 declaration.

25 THE COURT: When you say -- I understand that you've

1 made a hearsay objection.

2 MR. MADZIMOYO: Yes.

3 THE COURT: But what the declaration is used (sic) is
4 to authenticate business records; the documents are attached.

5 MR. MADZIMOYO: Yes.

6 THE COURT: Okay. I don't see that declaration as
7 making affirmative statements of fact other than as to the
8 business records, which is the normal way of doing it. What is
9 it about the declaration --

10 MR. MADZIMOYO: Okay.

11 THE COURT: -- that you believe is inadmissible
12 hearsay?

13 MR. MADZIMOYO: That --

14 THE COURT: And let me -- forgive me. Are you a
15 lawyer or not?

16 MR. MADZIMOYO: No, I'm not.

17 THE COURT: No. Okay. And I assumed that. And --

18 MR. MADZIMOYO: I'm a pro se litigant.

19 THE COURT: And so you don't have to argue about case
20 law --

21 MR. MADZIMOYO: Okay. All right.

22 THE COURT: -- or just -- okay?

23 MR. MADZIMOYO: Good. Here is --

24 THE COURT: I want to make clear --

25 MR. MADZIMOYO: I got it.

1 THE COURT: I'm asking you a question --

2 MR. MADZIMOYO: I thank you.

3 THE COURT: -- about it because you --

4 MR. MADZIMOYO: I thank you.

5 THE COURT: -- you've made the objection --

6 MR. MADZIMOYO: I got it.

7 THE COURT: -- on hearsay.

8 MR. MADZIMOYO: I got it. What's required, for us,
9 is -- there're a number of people that she said she relied on
10 for this information. This information contradicts six years
11 of information, okay, it contradicts, that is, a previous
12 affidavit by someone claiming to be in her own position; his
13 name is Juan Alva -- Aguirre -- Alvarez Aguirre. He's -- and
14 the first time we took this to federal -- they removed our
15 state petition to federal court; it was in the Northern
16 District of Georgia. There was another affidavit, and that
17 affidavit clearly said, according to the regularly kept
18 business records that they -- that he reviewed, that RAMP
19 2006-RP2 was the holder of the title and owner of the note.

20 Now, she comes back claiming similar position and
21 knowledge, and it's contradictory. And that same kind of
22 contradiction has continued through notices of foreclosure,
23 first corrected assignment, second corrected assignment --

24 THE COURT: But what the --

25 MR. MADZIMOYO: -- things --

1 THE COURT: -- what the declaration was used for was
2 to present the court with the documents. Are you disputing the
3 authenticity of the documents that are attached?

4 MR. MADZIMOYO: I'm --

5 THE COURT: Do you understand what I'm asking?

6 MR. MADZIMOYO: Well, there is no document attached
7 that shows that RAMP -- that FT Mortgage --

8 THE COURT: Um-hum.

9 MR. MADZIMOYO: -- sold it to ResCap, that ResCap
10 brought (sic) it, that ResCap then put it -- there are no
11 documents showing that. All we have is allegations made in the
12 declaration. Okay? What we have been asking for and demanding
13 is that, and they have continually avoided in state court and
14 federal court -- federal district court and here.

15 THE COURT: All right, let me ask -- I'll give you
16 another chance --

17 MR. MADZIMOYO: Thank you.

18 THE COURT: -- if you have anything else --

19 MR. MADZIMOYO: -- Um-hum.

20 THE COURT: -- you want to say.

21 But, Mr. Wishnew?

22 MR. WISHNEW: Yes, Your Honor.

23 THE COURT: Mr. Madzimoyo argues that what the record
24 shows is that the debtors sold the note concurrently to two
25 parties. What's your response to that?

1 MR. WISHNEW: I would say that's entirely inaccurate,
2 Your Honor.

3 THE COURT: Well, but walk me through it. It's not
4 enough to tell me --

5 MR. WISHNEW: Yeah. No, of course.

6 THE COURT: -- you think it's entirely inaccurate.
7 So --

8 MR. WISHNEW: Absolutely, Your Honor. So let's start
9 first with the note, Your Honor, which is attached as Exhibit 2
10 to Ms. Priore's declaration found at docket 7643.

11 THE COURT: Yes.

12 MR. WISHNEW: This was her declaration in support of
13 the objection. The note, signed by Mr. Madzimoyo, is endorsed
14 from --

15 THE COURT: FT --

16 MR. WISHNEW: -- FT Mortgage. This is the stamp at
17 the bottom of the page, which says, "Paid to the order of
18 Residential Funding Corporation, without recourse. FT Mortgage
19 Companies, dba EquiBank Mortgage Corporation". So that was
20 from EquiBank, the originator of the mortgage, to RFC.

21 The stamp above that says, "Paid to the order of the
22 First National Bank of Chicago as trustee, without recourse.
23 Residential Funding Corporation". So that's now assigning the
24 note from Residential Funding Corporation to First National
25 Bank of Chicago as trustee.

1 Turn the page, Your Honor, and we are -- you now look
2 at the first endorsement below the line, which says, "Paid to
3 the order of Residential Funding Corporation, without recourse.
4 Bank One, National Association, as trustee, f/k/a The First
5 National Bank of Chicago as trustee".

6 THE COURT: All right, so that's from --

7 MR. WISHNEW: So that's out of the securitization,
8 Your Honor.

9 THE COURT: Okay. So that goes from, in effect, First
10 National Mortgage back to --

11 MR. WISHNEW: Back to RFC, correct.

12 THE COURT: -- RFC.

13 MR. WISHNEW: And then the endorsement that -- the
14 stamp that follows, "Paid to the order of JPMorgan Chase Bank,
15 as trustee, without recourse, Residential Funding Corporation"
16 is then from RFC to JPMorgan Trust (sic) Bank. And then as
17 we've outlined in Ms. Priore's declarations and the objection
18 and our reply, through a series of corporate mergers the note,
19 as it sat with JPMorgan, ultimately ended up with Bank of New
20 York.

21 Let me now address -- I don't mean to cut Your Honor
22 off in terms of any questions you might have, but --

23 THE COURT: No, go ahead.

24 MR. WISHNEW: -- to address the point that
25 Mr. Madzimoyo's making about there being a double indebtedness

1 and simultaneously sent to two different entities, what we are
2 talking about here, Your Honor, is an obligation owed to Bank
3 of New York as trustee. Yes, there was a discrepancy in
4 assignments as to the specific trust that Bank of New York was
5 acting for, but it doesn't change the underlying fact and the
6 underlying -- which is that the obligat -- Bank of New York
7 always owned this loan; they always owned the loan. The trust
8 for which they were acting -- there might have been a
9 discrepancy, but the obligation has always been to Bank of New
10 York. And there's only been a single obligation; there's not
11 been two obligations.

12 So I think that really gets to the crux of the matter,
13 Your Honor, that clearly this note is properly -- has always
14 been properly with Bank of New York, there's only been one
15 obligation, and any evidence to the contrary is entirely absent
16 from the record. So that's --

17 THE COURT: Okay.

18 MR. WISHNEW: I'll address that point.

19 So that's the double-indemnity point, Your Honor. To
20 the extent that Mr. Madzimoyo's last point about hearsay and
21 showing transfers --

22 THE COURT: Yes.

23 MR. WISHNEW: -- I believe I've just addressed that
24 point, Your Honor.

25 In terms of enrichment -- unjust enrichment or -- the

1 fact of the matter is, Your Honor, as the note shows,
2 Mr. Madzimoyo took out a loan; he had an obligation to repay
3 his loan. He paid it for some point in time and then stopped.
4 Any payments up until the point where he began withholding
5 payments, it's not unjust enrichment or enrichment. The fact
6 of the matter is, he was living up to his obligation and then
7 he stopped doing so. And the owner of the loan, and its
8 servicer, which acts for the benefit of the investor, was
9 enforcing the rights to collect on the loan.

10 I think -- and so I really -- Your Honor, the point
11 that Bank of New York is the entity who is owed here, not two
12 different trusts, the fact is the actions that have been taken
13 to date, as set forth in both the objection and the reply, have
14 been entirely proper, that there's a clear chain of title here.
15 And frankly, while Mr. Madzimoyo believes he has certain claims
16 against GMAC Mortgage, for the reasons set forth we believe
17 that those claims are invalid and without merit.

18 THE COURT: Okay. Mr. Madzimoyo, you want to be heard
19 again?

20 MR. MADZIMOYO: Yes.

21 THE COURT: Please.

22 MR. MADZIMOYO: We have, Your Honor, more than enough
23 evidence over the last several years, both personally and, I
24 think, us as a country, to not just say "because it's said",
25 without evidence. That is the preference and the deference, at

1 least that I have experienced throughout this case, to a bank
2 allegation or assertion without proof is, to me -- Your Honor
3 just needs to -- the history doesn't show that such presumption
4 need to be -- and I'm not suggesting that you give it or you're
5 there, but we face that, and I'm hoping that you do not.

6 The list 1, 2, 3, Residential -- FT Mortgage,
7 Residential Funding, First National Bank, it is a listing of 1,
8 2, 3, but there're holes in it.

9 THE COURT: Let me ask you this.

10 MR. MADZIMOYO: And --

11 THE COURT: I'll --

12 MR. MADZIMOYO: Yes, go --

13 THE COURT: No, go ahead and finish; then --

14 MR. MADZIMOYO: -- go ahead.

15 THE COURT: -- I'll ask my question. I apologize.

16 MR. MADZIMOYO: No, all I'm saying is, not only
17 that --

18 THE COURT: Go ahead.

19 MR. MADZIMOYO: -- but when we have been first
20 challenged -- because we'd been paying our mortgage and
21 faithfully. And we even had been approved for a modification,
22 working with them. It is as we started doing some of that
23 investigation that we realized that we believe we were being
24 taken, okay? So we'd been paying our mortgage, okay, and all
25 of that, but we don't owe these. And this litany of 1, 2, 3

1 has holes in it. And then when we then get hit -- because we
2 challenged it and they said -- all the judge did, when we
3 presented our case, just a petition, just a simple petition --
4 I'm a pro se litigant; I'm not a lawyer. And she looked at it
5 and she saw and she said, please bring proper evidence of chain
6 of title. That was Judge Tangela Barrie, okay, in July 2009.

7 And every attempt that they have done to -- when they
8 run this litany down of FT Mortgage to Residential Mortgage to
9 whatever, is then contradicted by the record. And the record
10 then -- so the first was contradicted because there wasn't any
11 execution of it. The second is that there is a one-
12 satisfaction law, okay, and that is, we're only obligated to
13 pay a debt once. Deficiency judgments are running rampant now
14 in Florida and in Georgia where mortgage companies are coming
15 after homeowners who they foreclosed on, based, we believe, on,
16 many times, bogus documents.

17 So when we -- when two companies claim that we owe
18 them, both claim it to the point that they are willing to put
19 it as a notice of foreclosure, we take that seriously. And we
20 have a right to get clarity of that, or else we're not just
21 talking foreclosure here; we're talking New York (sic) Bank of
22 Mellon as trustee can come back to us at any time and say, you
23 now -- you also owe whatever. I'm not to believe that somehow
24 their records are going to be kept well, after they have had
25 the mess that they have here. There's no protection in this

1 for me.

2 THE COURT: Let me ask you this.

3 MR. MADZIMOYO: Okay.

4 THE COURT: Well, first off, do you have a lawyer in
5 the Georgia case that's on appeal?

6 MR. MADZIMOYO: We've done this all, my wife and
7 myself.

8 THE COURT: Right. And what was the relief that you
9 were seeking in the Georgia state-court action that's now on
10 appeal?

11 MR. MADZIMOYO: Okay, two things: first, an
12 injunction to stop the foreclosure --

13 THE COURT: Right.

14 MR. MADZIMOYO: -- second, declaratory relief.
15 Because of the mess of the record, we want the court to --
16 declarat -- and we -- and quiet title --

17 THE COURT: Let me ask you --

18 MR. MADZIMOYO: -- and damages.

19 THE COURT: -- did you raise, in the Georgia action,
20 the --

21 MR. MADZIMOYO: One-satisfaction --

22 THE COURT: -- arguments that you've made here about
23 where you argue that they concurrently sold --

24 MR. MADZIMOYO: Yes. Yes.

25 THE COURT: -- your loan --

1 MR. MADZIMOYO: Well, this --

2 THE COURT: -- to two parties?

3 MR. MADZIMOYO: Okay, here's what -- it's after -- in
4 June of 2013 -- May, June 2013, the Supreme Court of Georgia
5 made a ruling upon You v. Chase, which essentially changed the
6 landscape. Before that time, Reese case, which says you have
7 to say who's the secured creditor on the notice of foreclosure,
8 basically was the law of the land. The Supreme Court of
9 Georgia then said, the note and the security deed can be split,
10 as long as someone says they hold a security deed, they're good
11 to go, when others said, well, how did you get to be the holder
12 of the security deed, and Montgomery v. Bank of America said
13 you don't have standing because you're not a party to it.

14 Now, the -- and that's what they had been using. So
15 we modified our complaint, that is, and also included what we
16 heard the Supreme Court justice and the oral arguments of You
17 v. Chase say, and we documented that with a supplemental --
18 affidavit of supplemental authority, when he said, if --
19 because the homeowner -- I mean the lawyer for You said to the
20 Supreme Court, what if there's double jeopardy when you allow
21 for a split of a note and security deed? He said -- the
22 justice -- Supreme Court justice said, well, if two parties try
23 to claim both indebtedness or that the homeowner -- then the
24 homeowner can interplead them. Okay? And so based on that,
25 since it's post You v. Chase, we added that to our complaint.

1 The Superior Court judge, Tangela Barrie, ignored
2 that; we don't think the appellate court will at all. In
3 addition, we also asked the appellate court to overturn her
4 decision that it should go forward, because we don't think that
5 Supplemental Rule, I think, 14, was met. There was no
6 separation. In order for her to say, okay, you can go forward
7 but you're going to separate out GMAC, then there needed to
8 have been some separation of what those were and how it would
9 go forth or not. And that hasn't happened.

10 So, literally here we are in two courts, okay, arguing
11 both against GMAC here and GMAC there --

12 THE COURT: Right.

13 MR. MADZIMOYO: -- which should not be.

14 THE COURT: All right. Mr. Wishnew --

15 Thank you very much.

16 MR. MADZIMOYO: Thank you.

17 THE COURT: So is GMACM a party to the appeal that's
18 pending in Georgia?

19 MR. WISHNEW: To the extent they are named, Your
20 Honor, I believe so.

21 THE COURT: Right. I think Ms. Reyes --

22 MR. WISHNEW: But I think --

23 THE COURT: -- had indicated that they did join in the
24 motion to dismiss, to the extent that it was seeking equitable
25 relief --

1 MR. WISHNEW: That's correct, Your Honor.

2 THE COURT: And the complaint was dismissed in its
3 entirety, with prejudice. And here's what I'm trying to
4 understand, okay: if -- and I don't know whether I'm going to
5 do this or not, because I'm going to take the matter under
6 submission; but if I were to expunge the claim --

7 MR. WISHNEW: Sure.

8 THE COURT: -- and the Georgia appellate court
9 reverses the decision of the court below --

10 MR. WISHNEW: Sure.

11 THE COURT: -- Section 502(j) of the Bankruptcy
12 Code --

13 MR. WISHNEW: Will ask for reconsideration.

14 THE COURT: Mr. Madzimoyo -- and I recognize you're
15 not a lawyer, so --

16 MR. MADZIMOYO: All right.

17 THE COURT: 502(j) -- I can't give you any legal
18 advice, but 502(j) provides that "[a] claim that has been
19 allowed or disallowed may be reconsidered for cause. A
20 reconsidered claim may be allowed or disallowed according to
21 the equities of the case. Reconsideration of a claim under
22 this subsection does not affect the validity of any payment or
23 transfer from the estate made to a holder" -- I'll stop
24 reading; it goes on.

25 But I guess my question is this: if the Georgia

1 appellate court reverses and sends the case back to the Georgia
2 trial court, do you agree that Mr. Madzimoyo, if I were to
3 expunge the claim, could make a motion under 502(j) for
4 reconsideration, in light of the subsequent decision by the
5 Georgia appellate court?

6 MR. WISHNEW: Give me --

7 THE COURT: Or are you going to be going to the
8 Georgia court and say, Judge Glenn has expunged the claim, that
9 precl -- it's now -- the issue before you as to GMACM is now
10 moot?

11 MR. WISHNEW: Can you give me one minute, Your Honor?

12 THE COURT: Yes.

13 MR. WISHNEW: I'd like to read 502(j).

14 (Pause)

15 MR. WISHNEW: Your Honor, I would agree that he could
16 come back and seek reconsideration of the Court's earlier
17 decision, based upon a change in circumstances. I think, as a
18 court of equity, the Bankruptcy Court would --

19 THE COURT: Well, there's for-cause --

20 MR. WISHNEW: Correct, Your Honor.

21 THE COURT: -- language.

22 MR. WISHNEW: Right.

23 THE COURT: And I guess I'm equally concerned -- look,
24 Mr. Madzimoyo had the right to proceed with his action in state
25 court in Georgia, including against GMACM --

1 MR. WISHNEW: Um-hum.

2 THE COURT: -- well, not as to damages --

3 MR. WISHNEW: Um-hum.

4 THE COURT: -- but as to equitable relief. And

5 Ms. Reyes acknowledged that there was a request for equitable

6 relief. The case was dismissed with prejudice but he's

7 appealed.

8 MR. WISHNEW: Right.

9 THE COURT: Okay. I would be very uncomfortable

10 ruling while that appeal was pending, if GMACM were going to

11 take a position on the appeal that my ruling had a preclusive

12 effect on whatever the Georgia appellate court was to decide.

13 I mean, I'm perfectly prepared -- I'm not prepared -- I'm not

14 ruling from the bench and I don't know what my decision's going

15 to be. I take these issues seriously. And I'm prepared to go

16 forward and render a decision.

17 MR. WISHNEW: Right.

18 THE COURT: But I'm not trying to jump ahead of the

19 Georgia appellate court. There is -- if I were to decide in

20 the trust's favor, 502(j) would provide --

21 MR. WISHNEW: Yeah.

22 THE COURT: -- an avenue for Mr. Madzimoyo to come

23 back to this Court and say, Judge, see what the intermediate

24 appellate court in Georgia has done.

25 MR. WISHNEW: Yeah. I would agree with Your Honor. I

1 think that 502(j) is basically, for lack of a better term,
2 almost the safety valve here, because we do have simultaneous
3 litigation and the Bankruptcy Court has the right to address
4 the claim now. I think ultimately, if there is a ruling in
5 Mr. Madzimoyo's favor at the appellate level in Georgia, it
6 would be unfair of the trust to say, that's it, you're done,
7 you don't have any chance to come back to the bankruptcy court.
8 I think that's why 502(j) is in the Code, for that --

9 THE COURT: I agree.

10 MR. WISHNEW: -- for that specific reason. But
11 obviously, Mr. Madzimoyo bears the burden under 502(j) to prove
12 for cause. And the trust certainly reserves its rights to
13 address whether he's met his burden at that --

14 THE COURT: I'm not --

15 MR. WISHNEW: -- point in time.

16 THE COURT: I'm not getting into -- I don't know what
17 I'm going to rule, yet.

18 MR. WISHNEW: Right. No, understood.

19 THE COURT: But I just -- I think this has come up
20 once before in ResCap where -- he's permitted to proceed --

21 MR. WISHNEW: Yes.

22 THE COURT: -- to the limited extent of equitable
23 relief. He can go forward with damages as to the nondebtors.

24 MR. WISHNEW: Yeah.

25 THE COURT: Nothing I do precludes you from doing

1 that. But because he does have a claim for equitable relief
2 that he asserted against the debtors, if he had a complete
3 victory in Georgia it might not be for damages but it certainly
4 could be persuasive to me as to why he has a damages claim that
5 I would have to reconsider. Okay.

6 All right, that's helpful to me. I'm going to take
7 the matter under submission and in due course I'll be entering
8 something in writing. Please, it doesn't sound like -- since
9 the last brief has not been filed with the appellate court in
10 Georgia yet, it doesn't sound like there's an imminent decision
11 forthcoming. And of course, whatever the intermediate
12 appellate court does can be subsequently appealed. The only
13 thing I -- the only point I would make is, if you were -- and I
14 don't know what your state-court procedures are in Georgia.
15 The intermediate appellate court may not be the final word one
16 way or the other. The ResCap case moves forward. There hasn't
17 been a distribution yet on borrower claims, but it will
18 hopefully happen. I'm not trying to hold up distributions to
19 borrowers. So there's certainly -- circumstances could change
20 here, where distributions are made -- it's not -- I don't think
21 it's imminent, but I just wanted to make that clear.

22 Anyway, I'm going to take the matter under submission.
23 I appreciate your coming to court today. I hope you're going
24 to enjoy New York while you're -- you live in Georgia, right?

25 MR. MADZIMOYO: I live in Georgia. It's cold here

1 too.

2 THE COURT: It's a little chilly here for the last
3 couple of days.

4 MR. MADZIMOYO: Well, it's been chilly in Georgia;
5 it's ridiculous.

6 THE COURT: Okay.

7 MR. MADZIMOYO: Anyway.

8 MRS. MADZIMOYO: His birthday was yesterday.

9 THE COURT: Happy birthday.

10 MR. MADZIMOYO: Thank you. I do enjoy New --

11 THE COURT: So I hope you can enjoy New York while
12 you're here.

13 MR. MADZIMOYO: Thank you.

14 THE COURT: Okay?

15 MR. MADZIMOYO: I will.

16 MRS. MADZIMOYO: Thank you.

17 THE COURT: All right, I'm going to take the matter
18 under submission.

19 MR. MADZIMOYO: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. WISHNEW: Thank you for your time, Your Honor.

22 THE COURT: Thank you very much. That's the only
23 thing --

24 MR. WISHNEW: And wishes for --

25 THE COURT: -- we have --

1 MR. MADZIMOYO: -- happy holidays.

2 THE COURT: That's the only thing we have for today,
3 right?

4 MR. WISHNEW: That's the only thing, Your Honor.

5 THE COURT: Okay. Happy Thanksgiving to all of you.

6 MR. WISHNEW: Thanks.

7 THE COURT: Okay.

8 (Whereupon these proceedings were concluded at 10:52 AM)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D 635

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Date: November 24, 2014